

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 EVANSVILLE COMMUNITY SCHOOL DISTRICT : Case 28  
 : No. 48630  
 and : MA-7662  
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 EVANSVILLE EDUCATION ASSOCIATION :  
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Appearances:

Ms. Ellen LaLuzerne, Executive Director, Capital Area UniServ-South, for  
Ms. Joanne M. Hart, Attorney at Law, for the District.

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ARBITRATION AWARD

The Evansville Community School District and the Evansville Education Association jointly requested that the Wisconsin Employment Relations Commission designate the undersigned as Arbitrator to resolve a contractual dispute between the parties. Hearing was held on May 5, 1993, in Evansville, Wisconsin. A stenographic transcript of the hearing 1/ was prepared and the parties filed post hearing briefs, the last of which was received July 28, 1993.

STIPULATED ISSUE:

Did the District violate Part II, Article I, Section G or Part III, Article I, Section A or D of the parties' collective bargaining agreement when it involuntarily transferred the grievant to an assignment to teach middle school keyboarding? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

Part II, Article I, Section G provides:

No teacher shall be transferred between buildings, grade level or subject area by the administration without notification in writing. Each teacher involved in such a transfer shall be called in for a conference for explanation of the reasons for transfer. The teacher may, at his/her option, have an EEA representative present at such a conference.

A reasonable attempt will be made to initiate transfers by June 1.

When an involuntary transfer is necessary a teacher's academic training and certification as determined by the Department of Public Instruction length of service in the district, years of teaching experience, and

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1/ The Arbitrator hereby grants the District's motion to correct transcript.

ability and performance as a teacher in the district as per current documented evaluation by immediate supervisory personnel shall be considered in determining which teacher is to be transferred.

Part III, Article I, Sections A and D provide:

Article I: Employee Contracts

A. In assigning teaching duties, first consideration will be given to the primary professional competence of the teacher and to the experience in other fields as a teacher. No teacher shall be subject to teaching assignments other than those specified in his area of certification. Specific teaching assignments will appear on individual teacher's contracts at date of issuance.

. . .

D. If the individual's contract status as of September 1 will differ from the status in effect at the time the contract was signed, such status must be declared at the time of contract signing or the last day of the current year, whichever is later.

Association's Initial Brief:

The Association argues the District violated the clear language of Part III, Article I, Section A of the contract by involuntarily transferring the grievant to a position for which she was not certified. It contends the District "fabricated a team teaching situation" to circumvent the absence of appropriate certification. The Association asserts the team teaching was a sham, pointing to testimony about the absence of collaborative activity between team members.

The Association further contends the combination of the involuntary transfer and team teaching assignment caused scheduling and preparation time difficulties for the middle school teachers who were to work with the grievant. These difficulties, the continued availability of the prior incumbent in middle school keyboarding, and the problems the transfer created for the grievant's completion of her high school assignment all demonstrate that there were less disruptive alternatives available to the District. The Association urges rejection of any District argument that creation of a computer coordinator position for the prior incumbent justified the transfer.

The Association asserts that past involuntary transfers do not support the contractual propriety of the District's conduct. It argues that the prior transfers did not involve certification issues or were not brought to the Association's attention.

The Association alleges the District's conduct also violated Part III, Article I, Section D of the contract because the grievant was not timely advised of her new assignment. The Association alleges the District's evidence of tardy notice in other circumstances is not persuasive. It contends none of those instances were grieved.

The Association concludes by arguing the involuntary transfer is contrary to the District's philosophical commitment to providing students with the highest standard of education. The Association requests that the District's contract violation be remedied by returning the grievant to her prior high school assignment.

District's Initial Brief:

The District urges dismissal of the grievance because the Association has failed to establish any contract violation. The District argues that it fully complied with the contract when it involuntarily transferred the grievant.

Contrary to the Association, the District contends middle school keyboarding is within the grievant's certification when team taught. The District asserts it was forced to use team teaching once the grievant dropped a portion of her certification in a failed attempt to avoid the middle school assignment. The District argues the validity of the team teaching structure in question is not properly before the arbitrator because it has definitively been established the grievant possesses the necessary certification. In any event the District contends the team teaching in question has received DPI approval and was structured by the District in a manner consistent with DPI directives. The District argues that it first became aware of alleged attempts by teachers to avoid team teaching commitments during the arbitration hearing.

The District asserts it met all requirements of the Notice of Transfer language contained in Part II, Article I, Section G of the contract. It provided the grievant with notice of the transfer in April of the school year preceding the transfer and held a meeting to explain the basis for the transfer. The District further argues the Section G contract language gives it broad discretion when determining who to transfer and that it exercised this discretion in a manner consistent with its consideration of the contractually listed factors.

The District urges the Arbitrator to reject the Association argument that the time limits of Section D apply to involuntary transfers. It argues that such a conclusion would be contrary to the parties' past practice and would render meaningless the timing flexibility explicitly given the District in Section G.

### Association's Reply Brief

The Association argues that the contractual prohibition against assignments outside a teacher's "area of certification" should not be interpreted to allow use of "team teaching" as a means of expanding an "area of certification." It asserts the contract prohibits assignments which, although allowed by DPI regulation, are outside the teacher's certification.

### District's Reply Brief

The District urges the Arbitrator to conclude the Association has conceded that Article I, Section G was not violated because the Association made no argument about Section G in its brief.

The District contends the grievant is certified to teach middle school keyboarding by virtue of her lifetime license; the Arbitrator has no jurisdiction to consider the substance of the team teaching arrangement; the record establishes the legitimacy of the team teaching; there is no contractual requirement that the District consider "less disruptive alternatives" when making an involuntary transfer; and that the District's decision to transfer the grievant was in the best interest of the District.

The District further contends that the specific language regarding the timing of involuntary transfers must govern over inapplicable time limits regarding a change in "status" found in an unrelated portion of the contract.

### DISCUSSION:

During the 1991-1992 school year, the District had two business education teachers -- Brian Hammil and the grievant. As she had during her entire 19-year career with the District, the grievant taught exclusively high school courses. As it had since his hire for the 1989-1990 school year, Hammil's assignment included teaching keyboarding to middle school students.

In the spring of 1992, the District posted the part-time (one hour per day) position of computer coordinator with duties commencing with the 1992-1993 school year. Hammil, who had been serving as the ad hoc coordinator, was the only applicant and received the position. To provide Hammil with the release time necessary to perform the coordinator's duties, the District concluded it was necessary to relieve Hammil of a portion of his teaching assignment. Because it believed Hammil's teaching style was best suited to high school students, the District concluded Hammil would not continue to teach middle school keyboarding once he formally assumed his coordinator responsibilities. Because it believed her teaching style meshed well with middle school students and because she was certified to teach middle school keyboarding, the District further concluded the grievant would be assigned to assume Hammil's middle school keyboarding assignment.

In mid-April, 1992, the District verbally asked the grievant to voluntarily accept the middle school assignment. The grievant refused and by letter dated April 24, 1992, advised the District she would be asking the Wisconsin Department of Public Instruction (DPI) to alter her licensure so that she would no longer be individually certified to teach the middle school keyboarding course. On May 8, 1992 DPI granted the grievant's request for partial "decertification" effective June 30, 1992.

The District then met with a DPI representative and learned that the grievant continued to be certified for middle school keyboarding if she "team taught" the classes with middle school teachers. On May 28, 1992, the District presented the grievant with a letter asking her to voluntarily accept the "partial transfer" which consisted for the middle school classes. The grievant refused.

In early June 1992 the District and the grievant met to discuss the transfer. The grievant again declined to voluntarily assume the middle school assignment.

By letter dated June 11, 1992, the District gave the grievant "official notice" of the involuntary transfer.

The primary focus of the contractual dispute is on the question of whether the grievant's middle school teaching assignment violated the Section A prohibition against "assignments other than those specified in his area of certification." The Association in effect argues that Section A should be interpreted to only allow assignments which the grievant could teach as an individual (i.e., not through team teaching). The District contends that if the grievant's certification allows her to legally "team teach" an assignment, then the assignment is "within her area of certification."

Both parties present plausible interpretations of the contract. Neither party presented bargaining history or past practice which helps determine the parties' intent. Evaluating the language on its face, I conclude that the contract can most reasonably be interpreted as allowing the District to assign middle school keyboarding to the grievant. I reach this conclusion because the language in question is most reasonably viewed as protecting teachers against assignments for which they are not legally qualified, not as a way to narrow the scope of possible assignments more tightly than allowed by the law. Unless or until DPI concludes that the grievant cannot teach middle school keyboarding in the team teaching context established at hearing, the District does not violate Section A of the contract.

The Association has also argued that the timing of the transfer did not comply with language in Part II, Article I, Section G and Part III, Article I, Section D. I reject this argument because the timing of the grievant's transfer clearly complied with the specific requirement in Section G that "A reasonable attempt will be made to initiate transfers by June 1." The District

persuasively argues that the time constraints of Section D do not apply because they are applicable to a change in "contract status" not "assignments" and would, in any event, have the effect of negating the specific flexibility given the District by Section G.

Given all of the foregoing, I dismiss the grievance. I apologize for the tardy status of this Award.

Dated at Madison, Wisconsin this 25th day of January, 1994.

By Peter G. Davis /s/  
Peter G. Davis, Arbitrator